

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CASE NO. 18-50006

JASON JERRELL SMITH

DEFENDANT

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On June 21, 2023, Defendant filed a Motion to Vacate under 28 U.S.C. § 2255. (ECF No. 110). Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3), this matter was referred to the undersigned for the purposes of making a Report and Recommendation.

The Court has reviewed the Motion, and recommends it be denied as successive. On August 20, 2019, Defendant filed a Motion to Vacate which was considered on the merits, and denied on August 18, 2020. (ECF Nos. 82, 83). A second Motion to Vacate (ECF No. 90) was filed on February 1, 2021, and denied as successive, with the Court finding it lacked jurisdiction because Defendant had not obtained the required permission of the appellate court pursuant to 28 U.S.C. § 2255(h). *See Burton v. Stewart*, 549 U.S. 147, 152 (2007). The current Section 2255 Motion must suffer the same fate. While Defendant makes an effort to explain why his Motion is untimely, there is no indication Defendant sought or obtained leave from the appellate court to file this successive Motion to Vacate challenging the sentence imposed by U.S. District Judge Timothy L. Brooks. It is recommended that the Motion to Vacate (ECF No. 110) be **DENIED** as the Court lacks jurisdiction to consider it.

The parties have fourteen days from receipt of the Report and Recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely

objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the District Court.

DATED this 23rd day of June 2023.



CHRISTY COMSTOCK
UNITED STATES MAGISTRATE JUDGE